

**THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU**

**WRIT PETITION No.27770 of 1997 & W.P.M.P.No.2207 of 2006**

**ORDER:**

1        This writ petition is filed to declare the action of the first respondent i.e. State of A.P. represented by its Secretary, Revenue Department, in initiating proceedings in Memo No.3 S/9599/97-7 as arbitrary, illegal and without jurisdiction.

2        The averments, in brief, in the affidavit of the General Power of Attorney holder of the petitioner, filed in support of the writ petition, are 8916 sq. yards of land in S.No.20/4 of Somajiguda village was purchased by her from Smt. Varkatunnisa Begum, the recorded Pattedar and possessor of the said land in the revenue records from 1923 onwards, under a registered sale deed dated 03-05-1967 after satisfying herself with the title of her vendor, and has been in continuous possession and enjoyment thereof from 1967 onwards by paying A.P. Non Agricultural Land Assessment Tax for that land from 1972 onwards. In 1976 she filed a declaration under the provisions of the Urban Land Ceiling and Regulation Act 1975 (the Act). In 1983 the authorities under the Act informed her that the said land is recorded in the Town Survey Land register (TSLR) as Government land. As she, on verification, came to know that that land was recorded as government land in TSLR she made an application for rectification of the said error in TSLR, whereupon she was informed that inasmuch as the Town Survey was concluded in 1978 itself, her request for rectification of TSLR cannot be considered. As no notice of survey was served on her, she was not aware of the proceedings relating to survey. So she gave a detailed representation

for rectification of the TSLR, whereupon the District Collector, Hyderabad (third respondent), after getting the said land surveyed and conducting a spot inspection, was convinced with her possession and enjoyment over that land as her patta land and sought permission of the Commissioner of Survey, Settlements and Land Records (second respondent) to correct the entries in the TSLR. Second respondent, after verification, permitted the third respondent to make appropriate corrections and so the third respondent made the necessary corrections in the TSLR and the connected records, and issued certified copies of those corrected records to her in 1994. Long subsequent thereto she received the memo impugned in the writ petition, without any other papers, to appear before the Minister for Revenue on 23.05.1997. When she appeared before the Minister for Revenue and informed him about her not receiving any documents along with the memo served on her, the Hon'ble Minister gave a direction to the third respondent to furnish copies of all the documents to her. But copies of some of the documents only were furnished to her by 19.07.1997 and copies of the remaining documents were furnished only on 23-09-1997. Thereafter she came to know that the Hon'ble Minister passed an ex parte order of interim suspension of the order correcting the entries in the relevant registers, thereby depriving her legitimate right to the property purchased by her. Inasmuch as the first respondent has no power to review the order of the second respondent correcting the relevant entries in TSLR and other records, she filed the writ petition questioning the memo issued by the first

respondent.

3        The Law officer working under the third respondent filed his counter affidavit on behalf of the respondents inter alia contending that Khairtabad village, which was a Sarfekhas village, was initially surveyed in 1324 Fasli (1915 AD). Thereafter during 1917 Somajiguda village was carved out from a part of S.No.227 of Khairtabad village and was surveyed independently retaining a part of old S.No.227 in Khairtabad Revenue village. During the years 1968 to 1970 Town Survey of Somajiguda village was conducted under the provisions of the Andhra Pradesh Survey and Boundaries Act, 1923 (APSAB Act) whereat S.No.227 of Somajiguda was correlated to T.S.No.43/3, Block-E, Ward No.87 and was classified as Government Gairan land covering an extent of 13,678 sq. meters. As per the Wasool Baqui of 1353 Fasli (1944 AD) S.No.20 of Somajiguda village, whose total extent is Ac.17-37 guntas, was classified as patta land and was split into four sub divisions i.e. 20/1 consisting Ac.3.02, 20/2 consisting Ac. 1-11, 20/3 consisting Ac.1-28 and 20/4 consisting Ac.11-36; Old S.No.20/1 to 4 of Somajiguda village are given different town survey numbers 1 to 6, 8/1, 17, 18, 19/1, 20/1 and 20/3, whose total extent came to Ac.21.36 guntas, while the original extent of old S.No.20/1 to 4 was only Ac.17-37 guntas. The names of writ petitioner, her brother and her general power of attorney are shown as owners of 2,532 Sq. Meters in T.S.No.39, 2,840 Sq. meters in T.S.No.37 and 3,144 sq. meters in T.S.No.38 respectively. The writ petitioner and her family members are in possession of old S.No.218/1 and 2 part, 223/part, 225/part of khairtabad village. The title deeds of the writ petitioner

indicate that she purchased the land in S.No.20/4 of Somajiguda village. As old S.No.218/1 and 2 part, part of S.No.223, and part of S.No.225 of Khairtabad village correlate to new Town Survey Nos. 37, 38 and 39 in Block E of Ward No.87, it is clear that the writ petitioner is in possession of S.Nos.218/1 and 2 part, part of S.No.223 and part of S.No.225 of Khairtabad village, which are different from S.No.20/4 of Somajiguda village. Inasmuch as the results of the survey operations were published in A.P. Gazette No.60 dated 25-09-1976 as per Section 13 of APSAB Act, the entries made therein became final and as any person aggrieved by those entries would have to file a suit within 3 years from the date of Gazette publication questioning the survey, and as no such suit was filed petitioner is not entitled to any relief. On the application of the petitioner for correction of entries, the third respondent, under a misapprehension of law and facts, sent proposals to the second respondent for correction of the entries in respect of T.S.No.43/3 Block-E, Ward No.87 (Old S.No.20/4) Somajiguda in favour of the writ petitioner to an extent of 2706 sq. meters, and sought permission for correction of the entries in respect of the land covered by T.S.No.19/2 and part of T.S.No.20/1, Block-F, Ward No.87, though he has no such power to do so under the APSAB Act. Petitioner, after purchasing the land in S.No.20/4 of Somajiguda, a patta land, had encroached upon the land in S.No.227 of Khairatabad village, which is a government land. Payment of non-agricultural land assessment tax, allegedly made by the petitioner, would not confer any title to the land which does not belong to her. Inasmuch as

T.S.No.43/3, Block-D, Ward No.87 is classified as government land notice of proposed survey was served on the registered holder i.e. Tahsildar, Urban District on 28.05.1974. After noticing that government land in T.S.No.43/3, Block-E, Ward No.87 and T.S.No.20/1, Block-F, Ward No.87 is changed as patta land, third respondent sent a factual report to the first respondent to take necessary action for protecting the interest of the government. Therefore, the first respondent issued the impugned notice dated 23.05.1997 to the petitioner to represent her case. As the third respondent requested the first respondent to suspend the orders of the second respondent dated 09.05.1994, interim suspension was granted by the first respondent. All the papers on which the third respondent is relying on were served on the petitioner. Since the prayer made in this writ petition, in effect and in substance, is to declare the title of the petitioner, which relief can only be granted by a civil Court after trial, and as the survey proceedings undertaken as per the provisions of the APSAB Act had become final, petitioner is not entitled to any relief.

**WPMP No. 2207 of 2006**

4        Before referring to the contentions of Sri Challa Seetharamaiah, learned Senior Advocate appearing on behalf of the petitioner and the learned Advocate General appearing for the respondents I feel it appropriate to dispose of WPMP No.2207 of 2006, filed by the respondents in the writ petition, to receive the documents filed therewith as additional material papers.

5        In the affidavit filed in support of this miscellaneous petition, which is

sworn to by the third respondent, he alleged that the law officer attached to his office had, in the counter affidavit filed in the Writ Petition on behalf of the respondents, failed to mention all the essential facts required for adjudication of this writ petition. In pursuance of the notification under section 5 of the APSAB Act relating to conduct of the town survey in the Municipal corporation limits of Hyderabad and Secunderabad issued by the Government on 04.05.1960 and published on 19.05.1960, notification under Section 6 of that Act was issued by the survey officer on 30.06.1960 and was published in the prescribed manner on 29.09.1963, inviting all the persons having interest in the lands in the areas of Hyderabad and Secunderabad Municipal Corporation to attend survey either in person or through an agent, and notices to all the owners, who owned lands adjacent to government lands were issued for determination of the boundaries, as laid down by Section 9(2) of the APSAB Act. Though that notice was received and acknowledged by the petitioner and others on 03.07.1975, they failed to raise any objection. After completion of the demarcation notification, as contemplated by Section 13 of the APSAB Act, was issued in the District Gazette on 25.09.1976, which became final as the petitioner did not avail the remedy of appeal within three years. Petitioner filed this writ petition suppressing the service of notice under Section 9(2) of APSAB Act on her. As the papers filed along with the miscellaneous petition are relevant for disposal of this writ petition they may be received as additional material papers on behalf of the respondents.

6        The General Power Of Attorney of the writ petitioner filed her counter affidavit inter alia alleging that inasmuch as the deponent to the counter affidavit filed on behalf of the respondents in the writ petition admitted that Ac.17-37 guntas in S.N.20 of Somajiguda, which is classified as patta land, was split into four sub divisions and that **“Statutory notices have been served on the registered holders i.e. Tahsildar, Urban District on 28-05-1974 since S.No.43/3 Block – E, Ward No.87 has been classified as Government land”**, the allegations in the affidavit filed in support of this WPMP that notice under Section 9(2) of the APSAB Act was served on the petitioner in respect of the land involved in this writ petition cannot be true, because the report of the third respondent dated 19.12.1996 also shows that notice under Section 9(2) of APSAB Act was served only on the Urban Tahsildar in respect of T.S.No.43/3 of block-E of Ward 87 on 28.05.1974, as it was recorded as government land in TSLR. Since copies of the notices allegedly served on the petitioner are not filed, and as the signatures found in the register produced, as one of the additional material papers, are not the signatures of the petitioner or her family members, additional material papers sought to be filed with a view to show that the petitioner received notices of survey are but concocted and so the petition is liable to be dismissed.

7        The deponent to the counter affidavit filed on behalf of the respondents in the writ petition filed his reply affidavit in W.P.M.P. alleging that inasmuch as the counter affidavit filed by him in the writ petition was prepared as per the records available in the Collectorate, and as the factum of service of notice under Section 9(2) of the APSAB Act on the petitioner and her family

members came to light only after the records from the Director of Survey and Land Records were called for, after he filed his counter affidavit in the Writ Petition, he could not mention the factum of service of notice of survey on the petitioner and others in his counter affidavit filed in the Writ Petition. So the entire original record pertaining to the survey and subsequent proceedings of the Collector and the Commissioner of Survey and Settlement are being placed before the Court for its perusal. So they may be received as additional material papers on behalf of the respondents.

8            This WPMP seeking leave of the court to receive additional documents, obviously is filed in view of Rule 12(iii) of the Writ Proceeding Rules 1977. As the deponent to the counter affidavit in the writ petition, through his reply affidavit in this WPMP, swore to the fact that the counter affidavit in the Writ Petition was prepared on the basis of the record available in the Collectorate only and without verifying the records in the Survey department, and as it is stated that the records received from the Survey department show that notices under Section 9(2) of the APSAB Act were served on the petitioner and her family members, and as judicial notice can be taken of the fact that government officials arrayed as respondents in Writ Petitions, if they are successors in office of an officer whose action is challenged therein, usually give instructions for preparation of the counter affidavits without taking pains to go through the entire record, either due to lack of patience or lethargy or for other reasons like it is not they but their predecessors in office or other officers that had dealt with the file earlier, and

feel that it is not their responsibility to put forth all the facts before the Court, as it is the action of some other officer that is being questioned in that writ petition,

I accept the explanation given by the deponent to the reply affidavit filed in this WPMP. For that reason and since it would be appropriate to dispose of the writ petition on the basis of all the relevant records, WPMP No.2207 of 2006 is allowed and additional material papers filed therewith are received for perusal by the Court.

9        The long and short of the contentions of Sri Challa Seetharamaiah learned Senior Advocate appearing on behalf of the petitioner are as no notice of survey under the provisions of the APSAB Act was served on the petitioner, survey proceedings allegedly undertaken by the respondents do not bind the petitioner, and as there is no specific denial of the averment in the affidavit filed in support of the writ petition that no notice of survey was served on the petitioner or any of the members of their family in the counter affidavit filed on behalf of the respondents in the writ petition, where it is stated that notice of survey was served on the Tahsildar Urban District on 28.05.1974, inasmuch as S.No.43/3 Block E Ward 87 is classified as government land, it should be taken that respondents impliedly admitted that no notice of survey was given to the petitioner, and as they thought it fit to file a petition to receive additional material papers on their behalf only after he made all his submissions, and came out with a reply affidavit at a very belated stage that notice of survey was served on the petitioner and her family members, it is easy to see that the record now produced by the respondents as additional material papers, could or might have been brought into existence by the respondents for the purpose of this petition, and so that record should not be taken into consideration for disposal of this petition, and

since the title of Smt. Varkatunnisa Begum, the vendor of the petitioner to the property purchased by the petitioner under the registered sale deed dated 03.05.1967 is not disputed, and as the petitioner came into possession of 8,916 Sq. yards in S.No.20/4 under that sale deed, and inasmuch as the names of the vendor of the petitioner and the petitioner were recorded in the revenue registers as pattedars of that land, and as the petitioner has been paying the non-agricultural land assessment tax also in respect of the land purchased by her, and as the petitioner had immediately after her coming to know about her land being recorded as government land in the revenue register made an application to the first respondent for correction of those entries in the revenue registers, and as the third respondent, after verifying all the records and ground realities, submitted a report to the second respondent, and as the second respondent also, after having satisfied himself that there was a mistake in the survey, permitted correction of the entries in the relevant registers, necessary corrections were made in the survey and other registers, but the successor in office of the third respondent, for reasons best known to him, seems to have addressed a letter to the first respondent for reviewing the decision of his predecessor in office and the third respondent correcting entries in pursuance of the said representation of the petitioner. It is his contention that in view of Section 9(2) of the APSAB Act and Rules 5 and 10 of the Rules framed under the APSAB Act, which read

**Section 9(2):** Notice to Registered holders of lands affected:- Notice of every decision of the survey officer under Section 9(1) shall be given in the prescribed manner to the registered holders of the lands the boundaries of which may be affected by the decisions.

**Rule 5:** The notice issued under Section 9(2) shall, except in the case of street surveys and boundary surveys, be in the form of an extract from the field register relating to the holding, and shall state the time within which and the officer to whom an appeal may be presented and shall be accompanied by a printed form of acknowledgement which shall be signed and dated in token of the receipt of the notice and returned to the officer who issued it. (Underlining mine)

**Rule 10:** When the registered holder or other person on whom any of the notices or communications referred to in the foregoing rules is to be served is absent, service may be effected by delivering the notice or communication to some adult male member of his family at his usual place or of abode or to his authorized agent or by affixing it on some conspicuous part of his last known residence or on some conspicuous part of the land to which the notice or communication relates, or by sending it to him at his last known place of residence by Registered Post Acknowledgement Due. When service is effected by so affixing the notice, the serving officer shall not the method of service on the printed form of acknowledgement which is returned to the officer issuing the notice or communication.

it is mandatory for the survey authorities to give notice in printed form to the affected parties informing them as to before whom they may present an appeal against their decision, and inasmuch as the respondents did not produce such printed form of notice served on the petitioner, and as there is nothing on the record to show that the petitioner was informed the name of the officer to whom an appeal can be preferred by her, it is clear that there is no proper compliance with the provisions of the APSAB Act, and inasmuch as service of notice on the registered holder is mandatory under the APSAB Act, proceedings of the survey conducted without notice to her would not bind the petitioner, as her land was included in another survey number without any notice and relied on *Poomangalalorakath Mariyam Karamavathi and others Vs. Palakkotanantakath Ummer Kutti and others*<sup>[1]</sup> in support of the said contention. Relying on *Secretary to Government of Karnataka Vs. V. Harishbabu*<sup>[2]</sup>, where the apex Court, while considering the question whether notice under Section 14(2) of the Arbitration Act 1940 is mandatory for the limitation to run had, after adverting to the observations in *Indian Rayon Corporation Ltd. Vs. Raunad and Company Pvt. Ltd*<sup>[3]</sup> reading

“The fact that the parties have notice to the filing of the award,

is not enough. The notice must be served by the Court. We reiterate again that there must be (a) filing of the award in the proper Court; (b) service of the notice by the court or its office to the parties concerned; and (c) such notice need not necessarily be in writing. It is upon the date of service of such notice that the period of limitation begins and as at present under clause (b) of Article 119 of the Act, the limitation expires on the expiry of the 30 days of the service of that notice for an application for setting aside of the award. The importance of the matter, which need be emphasised, is the service of the notice by the Court”

“The issuance of a notice under Section 14(2) of the Act by the Court is a mandatory requirement though the section does not prescribe any formal mode for the service of the notice. What is essential under the said provision is that there must be service of notice or intimation or communication of the filing of the award by the Court to the parties, the mode of service of such notice being immaterial. It is the substance and not the form of the notice which is relevant and hence it is established that a notice or communication or information of the filing of the award has been issued by the Court and served on the party concerned, the statutory requirements of Section 14(2) of the Act would stand satisfied. Keeping in view the difference in the phraseology of Section 14(1) and 14(2) of the Act, it follows that the notice from the Court under Section 14(2) of the Act need not be in writing. It can be oral also but what is necessary is that a notice, communication or information to the effect that an award has been filed in the Court must be given by the Court to the parties concerned. Notice to the pleaders of the parties, who are representing the parties before the Court, would of course be sufficient compliance with the requirements of Sub-Section (2) of Section 14 of the Act. A notice by the arbitrator under Sub-Section (1) of the Act is not a substitute for the notice which the Court is enjoined upon to issue under Sub-Section (2) of Section 14 of the Act.”

held that service of notice is mandatory and contended that in the absence of service of notice under the provisions of the APSAB Act to the petitioner the fact that the petitioner had notice of survey subsequently through other mode, would not validate the invalid survey made without notice to her. Relying on the observations of the apex Court in ***Dattaram S. Vichare Vs. Thukaram S. Vichare and others***<sup>[4]</sup> a case arising under Maharashtra Housing and Area Development Act, 1976, he contended that the action of the respondents in correcting the entries in the survey registers without notice to the writ petitioner is wholly without jurisdiction. Relying on ***Hyderabad Potteries Pvt. Ltd Vs. Collector, Hyderabad District and another***<sup>[5]</sup> where it is held that survey is intended for identification of lands and fixation of boundaries and that it is not a record of rights and that the entries in TSLR,

though are relevant, are not conclusive, contended that entries corrected during survey without notice to the petitioner would not have any effect on her title to the land purchased by her. With regard to correction of entries in the survey and other records by the third respondent, after obtaining consent from the second respondent it is his contention that as per the provisions of the APSAB Act an appeal against the decision of the survey authorities has to be preferred to the Board of Revenue, and as the Board of Revenue was abolished by the Board of Revenue (Replacement by Commissioner) Act, 1977 and as the second respondent is constituted as the appropriate authority to decide the appeals arising under APSAB Act, as per that Act appeal against the order of Survey Officer has to be preferred to the second respondent, and inasmuch as the mode in which the appeal reached the concerned appellate authority for his decision is irrelevant, when the appeal in fact reaches the concerned appellate authority, the representation sent by the petitioner to the government has to be treated as an appeal to the second respondent against the proceedings of survey conducted without notice to her or her family members, and as the period of limitation for preferring an appeal against an order passed without notice does not commence till that order comes to the notice of the effected party, the effected party can prefer the appeal after coming to know the adverse order passed against him and so the order passed by the third respondent in pursuance of the permission given by the second respondent on the representation sent by the appellant, should be treated as an order in the appeal preferred by the petitioner and so that order cannot be said to be an order without jurisdiction. His contention is that inasmuch as the order of the second respondent, as the appellate authority, is binding on all and as no power of review is conferred on the first respondent by the APSAB Act, the order of the second respondent is not amenable to review by anybody. Relying on the following passages at pages 880 and 881 of ***London & Clydeside Estates Ltd. Vs. Aberdeen District Council***

**and another** <sup>[6]</sup>

“.....This provided that the time within which the relevant certificate was to be issued by the respondents was to be ‘the period of two months from the date of receipt’ of the relevant application, and from this the Second Division were of opinion that the respondents had no remaining power to issue a certificate in the form required by the second conclusion of the appellants’ summons. In passing, I should remark that the point was a novel one before the second Division, the respondents having conceded before the Lord Ordinary that the two conclusions stood or fell together, and having withdrawn this concession on the reclaiming motion in the Second Division.

It will be convenient to deal with the points raised in what I conceive to be their logical order rather than the order in which they were argued by the respective counsel.

On the basis, the first question for consideration is the consequence of what was admitted to be a defect in the purported certificate of 22<sup>nd</sup> October 1974, namely the failure by the predecessors of the respondents to include in the certificate information in writing as to the appellants’ rights of appeal to the Secretary of State. Was this requirement, which has the authority of Parliament behind it, mandatory or was it in some sense director only? I have no doubt that it was mandatory, and that the failure to include this information was fatal to the certificate. In the course of argument counsel for the respondents candidly conceded that the only purpose of the requirement was to inform the applicant of his rights of appeal, including the time limit within which they should be exercised. The present appellants aver that they were misled by this defect and that it was as a result of this that their appeal was out of time. The averment has never been put to the proof, and one of the respondents’ alternative arguments was that, in the event of otherwise total failure, the appellants should be put to the proof of this. But in my view this argument is without foundation. The validity of the certificate itself is in question, and if, as I believe, the requirement is mandatory the certificate falls independently of whether the appellants were in fact misled. I find it impossible to accept that a requirement by an instrument of statutory force designed for the very purpose of compelling a public authority to inform the subject of his legal rights can be treated as simply regulatory if the requirement is not complied with. If I required authority for this proposition I would refer to *Agricultural, Horticultural and Forestry Industry Trading Board V. Kent* (1970) 1 All ER 304, (1970) 2 QB 19) *Rayner V. Stepney Corpn* (1911) 2 Ch 312 } and *Brayhead (Ascot) Ltd V. Berkshire County Council* (1964) 1 All ER 149, (1964) 2 QB 303 notwithstanding that it relied on *Edwick V. Sunbury-on-Thames Urban District Council* (1961) 3 All ER 10, (1962) 1 QB 229 which was disapproved in *James V. Secretary of State for Wales* (1966) 3 All ER 964, (1968) AC 409, which was decided on an argument irrelevant to the present appeal. However, I am content to assert a general principle to the effect that where Parliament prescribes that an authority with compulsory powers should inform the subject of his right to question those powers, prima facie the requirement must be treated as mandatory.....”

and the observations in para 10 of the apex Court in ***State of Gujarat Vs.***

***Salimbhai Abdulgaffar Shaikh and others*** <sup>[7]</sup> reading

“10. Sub-section (4) of Section 34 of POTA provides for an

appeal too the High Court against an order of the Special Court granting or refusing bail. Though the word “appeal” is used both in the Code of Criminal Procedure and the Code of Civil Procedure and in many other statutes but it has not been defined anywhere. Over a period of time it has acquired a definite connotation and meaning which is as under:

“A proceeding undertaking to have a decision reconsidered by bringing it to a higher authority, especially the submission of a lower court’s decision to a higher court for review and possible reversal.

An appeal, strictly, so-called, is one in which the question is, whether the order of the court from which the appeal is brought was right on the material which the court had before it.

An appeal is removal of the cause from an inferior to one of superior jurisdiction for the purposes of obtaining a review or retrial.

An appeal, generally speaking is a rehearing by a superior court on both law and fact”

and the passages in American Jurisprudence reading

“The term ‘appeal’ is a word used with very indefinite meaning. It is some times used to denote the nature of appellate jurisdiction, as distinguished from original jurisdiction, without regard to the particular mode by which a cause is submitted to a reviewing court. Even when applied to the method by which the case is taken from the lower court to the reviewing court, ‘appeal’ is indefinite in meaning. It may have the meaning it had in equity of being a trial de novo, or it may be used to designate what is in substance an error proceeding. The tendency at the present time is to use it in the later sense. Even in equity cases and in some jurisdiction which maintain the distinction between law and equity, an appeal does not uniformly mean a trial de novo in the appellate court; it is essentially an error proceeding. ‘Appeals’ even in law cases, may be as to questions of fact or as to questions of law. The tendency, however, is to limit appellate courts of final jurisdiction in the consideration of questions of fact.”

and the meaning of ‘appeal’ in ‘Words and Phrases’ by West Publishing

Company reading

“Invoke aid of

An ‘appeal’ to superior Court from decision of administrative board is not an appeal in the sense of a transfer of jurisdiction from one court to another, but is a process for invoking judicial power to determine legal injury complained of, or legality of an act done by officers of another department. Colonial Beacon Oil Co. V. Zoning Board of Appeals of City of Hartford, 23 A.2d 151, 152, 128 Conn. 351.

“Appeal”, as used in Mansf.Dig. 5687, creating a board for the equalization of taxable values in each country, and providing that any party aggrieved by the action of the board may ‘appeal’ there from to the country court, should not be construed in its technical sense of a removal of the case from an inferior to a superior court for review, but in its popular signification of ‘Invoke the aid of”, Prairie Country v. Matthews, 46 Ark. 383, 386.”

and the observations in *Nagendra Nath Dey Vs. Suresh Chandra Dey*<sup>[8]</sup> reading

“There is no definition of appeal in the Code of Civil Procedure, but their Lordships have no doubt that any application by a party to an Appellate Court, asking Subordinate Court, is an appeal within the ordinary acceptation of the term... Similarly in *Raja of Ramnand v. Kamid Rowthen*, 53 Ind App 74 = (AIR 1926 PC 22) a civil revision petition was considered to be an appropriate form of appeal from the judgment in a suit of small causes nature. A Full Bench of the Madras High Court in *P.P.P. Chidambara nadar V. C.P.A. Rama Nadar*, AIR 1937 Mad. 385 had to decide whether with reference to Article 182(2) of the Limitation Act 1908 the term ‘appeal’ was used in a restrictive sense so as to exclude revision petitions and the expression ‘appellate Court’ was to be confined to a Court exercising appellant, as opposed to, revisional powers. After an exhaustive examination of the case law including the decisions of the Privy Council mentioned above the Full Bench expressed the view that Article 182 (2) applied to civil revisions as well and not only to appeals in the narrow sense of that term as used in the Civil Procedure Code. In *Secretary of State for India in Council v. British India Steam Navigation Company*, (1911) 13 Cal LJ 90 an order passed by the High Court in exercise of its revisional jurisdiction under Section 115, Code of Civil Procedure, was held to be an order made or passed in appeal within the meaning of Section 39 of the Letters Patent. Mookerji, J., who delivered the judgment of the Division Bench referred to the observations of Lord Westbury in *Attorney General V. Sailem*, (1864) 10 HLC 704 and of Subramania Ayyar, J., in *Chappan V. Moidin*, (1898) ILR 22 Mad 68 at p. 80 (FB) on the true nature of the right of appeal. Such a right was one of entering a superior Court and invoking its aid and interposition to redress the error of the Court below. Two things which were required to constitute appellate jurisdiction were the existence of the relation of superior and inferior Court and the power on the part of the former to review decisions of the latter.

which are followed in ***Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatraya***

**Bapat**<sup>[9]</sup> observing

“There is no definition of appeal in the Code of Civil Procedure, but their Lordships have no doubt that any application by a party to an Appellate Court, asking Subordinate Court, is an appeal within the ordinary acceptation of the term... Similarly in *Raja of Ramnand v. Kamid Rowthen*, 53 Ind App 74 = (AIR 1926 PC 22) a civil revision petition was considered to be an appropriate form of appeal from the judgment in a suit of small causes nature. A Full Bench of the Madras High Court in *P.P.P. Chidambara nadar V. C.P.A. Rama Nadar*, AIR 1937 Mad. 385 had to decide whether with reference to Article 182(2) of the Limitation Act 1908 the term ‘appeal’ was used in a restrictive sense so as to exclude revision petitions and the expression ‘appellate Court’ was to be confined to a Court exercising appellant, as opposed to, revisional powers. After an exhaustive examination of the case law including the decisions of the Privy Council mentioned above the Full Bench expressed the view that Article 182 (2) applied to civil revisions as well and not only to appeals in the narrow sense of that term as used in the Civil Procedure Code. In *Secretary of State for India in Council v. British India Steam Navigation Company*, (1911) 13 Cal LJ 90 an order passed by the High Court in exercise of its revisional jurisdiction under Section 115, Code of Civil Procedure, was held to be an order made or passed in appeal within the meaning of Section 39 of the Letters Patent. Mookerji, J., who delivered the judgment of the Division Bench referred to the observations of Lord Westbury in *Attorney General V. Sailem*, (1864) 10 HLC 704 and of Subramania Ayyar, J., in *Chappan V. Moidin*, (1898) ILR 22 Mad 68 at p. 80 (FB) on the true nature of the right of appeal. Such a right was one of entering a superior Court and invoking its aid and interposition

to redress the error of the Court below. Two things which were required to constitute appellate jurisdiction were the existence of the relation of superior and inferior Court and the power on the part of the former to review decisions of the latter.

and the following observations in ***Uday Shankar Triyar Vs. Ram Kalewar Prasad***

***Singh and another*** <sup>[10]</sup>

“17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well recognized exceptions to this principle are:-

- i) where the Statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.
- ii) Where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;
- iii) Where the non-compliance or violation is proved to be deliberate or mischievous,
- iv) Where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.
- v) In case of Memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant.

he contended that inasmuch as the order of the survey authorities correcting entries in the revenue survey register without notice to the petitioner is a nullity, even assuming that the order of the second respondent rectifying the mistake in survey registers was made without jurisdiction, that order which had the effect of setting at naught an irregular and unsustainable survey made by the survey officials, cannot be set aside by the first respondent in view of the ratio in ***Mohammad Swalleh and others Vs. Third Addl. District***

***Judge, Meerut and another*** <sup>[11]</sup> and ***Maharaja Chintamani Saran Nath Shahdeo***

***Vs. State of Bihar and others*** <sup>[12]</sup> and contended that in any event since the

first respondent cannot decide its own title to the property as held in ***Sree***

***Pancha Murthy Co-op. House Building Society Ltd. Vs. Govt. of A.P. and***

*others*<sup>[13]</sup> and *Sree Pancha Murthy Co-op. House Building Society Ltd. Vs.*

*Govt. of A.P. and others*<sup>[14]</sup> where it is observed that

“.....The sum and substance of all the decisions is that the finding of Survey Officer under Section 13 is not final as regards the title and even regarding the boundary the same is final only when the party is put on notice and participates in the enquiry. Any enquiry or decision given under Survey and Boundaries Act, are only confined to the correctness of the boundary and it cannot determine the question of title. Admittedly, in the instant case, no individual notices were issued as required under Section 9 of the Act and the decision was also not communicated to the concerned individuals. Further, as per the decisions referred to above, out would be only final as regards the boundaries of the survey numbers, but it has no the effect of either investing or divesting the title. .... It is also to be noticed in this regard that the Government itself is declaring that land is a Government land and a substantial defence is put up by the petitioners tracing out the history right from Sarfekhas records. In such a situation, it would not be appropriate for the government to declare for itself that the land belongs to the Government. It cannot decide the title for itself, some authority under the Act or the civil Court has to decide the same.”

first respondent in any event, by entertaining the letter written by the third respondent, cannot pass any order adverse to the petitioner. It is his contention that the order passed by the third respondent as per the directions of the second respondent, can only be questioned in a civil court, but not by filing a petition for review before the first respondent, by relying on *M/s. East India Commercial Co. Ltd Calcutta and another Vs. Collector of Customs, Calcutta*<sup>[15]</sup> and *Calcutta Discount Co. Ltd., Vs. Income Tax Officer, Companies*

*District I, Calcutta and another*<sup>[16]</sup> in support of the said contention. He also relied on *Calvin V. Carr and others*<sup>[17]</sup> and contended that first respondent cannot review the order passed in favour of the petitioner.

10. The contention of the learned Advocate General is that inasmuch as a person aggrieved by the determination of any boundary in a survey conducted under the provisions of the APSAB Act, as per Section 13 of that Act has to institute a suit within 3 years from the date of notification either to

set aside or modify the said determination, and as the petitioner did not file any such suit though the record available with the respondents show that she and her general power of attorney were served with notice of the said survey, and as neither the second respondent nor the third respondent have the power or authority to order correction of entries made in the corrected survey registers, and as the third respondent, basing on the representation made by the petitioner to the Government referred to him for verification, got the land resurveyed and addressed the second respondent to rectify the survey and land records and the second respondent agreed for correction of the entries in the registers though he has no authority or jurisdiction to make such correction, the successor in office of the third respondent, having found out the mistake committed, addressed a letter to the first respondent basing on which a notice was issued to the petitioner for hearing on the validity of the correction made by the third respondent, and as the petitioner filed this petition without waiting for the orders to be passed by the first respondent, this petition, which is in the nature of a writ of prohibition prohibiting the first respondent to entertain the proceedings for review or revising the order of the second respondent passed without jurisdiction, is premature. Relying on *S.Govindameenan Vs. Union of India*<sup>[18]</sup> and *Ishabeevi and others Vs. Tax Recovery Officer*<sup>[19]</sup> and *Tirumala Tirupathi Devasthanam and another Vs. Thallapaka Ananthacharyulu and others*<sup>[20]</sup> he contended that no writ of prohibition can be issued against an executive action unless there is total absence of jurisdiction and inasmuch as it is not the case of the petitioner that any of the principles of natural justice are violated by the first respondent, who has a right to review all or any of the actions of respondents 2 and 3, who are but its subordinates, at any time in the interests of the larger public as held in *Y.Konda Reddy Vs. State of Andhra Pradesh and others*<sup>[21]</sup>

following the observations made in *A. Sanjeevi Naidu Vs. State of Madras and another*<sup>[22]</sup> and *R.R. Verma and others Vs. Union of India*<sup>[23]</sup>, petitioner is not entitled to the relief sought in this petition, more so because she, in any event, has a right to question the decision of the first respondent, if it is adverse to her. Relying on *Rai Sahib Ram Jawaya Kapoor and others Vs. State of Punjab*<sup>[24]</sup> where it is held that though it may not be possible to give an exhaustive definition of what 'execution function' means and implies, ordinarily 'executive power' connotes the residue of governmental functions that remain after legislative and judicial functions are taken away, he contended that first respondent as the higher supervisory body of the general administration of the State has the jurisdiction to correct the errors, if any, committed by its officers, and in any event as the petitioner who received notice under Section 9(2) of APSAB Act on 03.07.1975, came to Court alleging that no notice was served on her, there are lack of bona fides on her part and as a division bench of this court in *Ibiza Industries Limited and another Vs. Union of India and others*<sup>[25]</sup> held that doctrine of Uberrima fides' are applicable to the fullest extent to applications under Article 226 and that the Court will not grant relief to a person who does not come to Court with clean hands, petitioner, who did not come to court with clean hands, in any event, is not entitled to the relief sought for in this petition.

11 The memo impugned in the writ petition reads:

REVENUE (SS) DEPARTMENT  
Memo No.3S/9599/SS1/97 Dated. 2-6-1997  
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Sub:- Land – Hyderabad District Secunderabad Mandal Somajiguda village correction of wrong entries in respect of S.No.37, 39 and 43/3 in Block and RS No.1 and 20/1 Block F of Ward 87- Hearing on 14-6-97 at 11.00 AM in the chambers of Minister (Revenue) in the Secretariat premises – Intimation – Reg.

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Smt. Srelatha Bhupal W/o. Sri Krishna Ram Bhupal and Smt. Varalaxmi Bhupal D/o Sri Krishna Ram Bhupal are informed that

their cases on the above subject is posted for hearing on 14-6-97 at 11.00 AM in the chambers of Minister for Revenue, 8<sup>th</sup> Floor, 'J' Block, Secretariat.

2. They are therefore requested to attend the hearing on the above date and time either in person or through an Advocate, along with the material.

SD x-x-x-x

Deputy Secretary to Government.”

So it is clear that it is only a notice of hearing of the case before the first respondent, which is akin to a show cause notice but not a decision by the first respondent. It is well known that this Court usually does not interfere with show cause notices. For that reason only this petition is liable to be dismissed as premature because no right of the petitioner to her property can be said to have been infringed by the notice impugned. But without dismissing the petition on that ground I wish to make my observations on the important contentions raised by the learned counsel for the parties, clarifying that those observations are being made only for the purpose of disposal of this petition and that they should not be taken as my findings on the points raised before me.

12 The sheet anchor of the case of the petitioner, as seen from the contentions of the learned senior Advocate, is that as she had no notice of survey all the proceedings taken subsequently if not valid or not binding on the petitioner. The specific case of the respondents, as seen from the documents produced along with WPMP No.2207 of 2006 is that notice of survey in fact was given to the petitioner and her family members. It is true that respondents filed the said WPMP No.2207 of 2006, long subsequent to the learned senior counsel for the petitioner making his submissions, after taking several adjournments. The record produced by the respondents along with WPMP No.2207 of 2006 discloses service of notice on the petitioner and the members of her family. It is the contention of the petitioner that those documents are brought into existence or are concocted in order to get

over the plea taken by the petitioner. Whether the signatures on the documents relied on by the respondents are true or not cannot be decided in this petition. Be that as it may, I find force in the contention of the learned Advocate General that this petition is filed under an apprehension that the title of the petitioner may be in jeopardy if the first respondent were to review the order passed by respondents 2 and 3 correcting the entries in survey register, and so this petition which is akin to an advance appeal on an assumption that the first respondent is going to pass an adverse order against the petitioner, is but a writ of prohibition. So, the principles laid down by the apex Court in S.Govindameenan case (18 supra) and Thallapaka Ananthacharyulu case (20 supra) apply. Therefore, this petition cannot be entertained unless the first respondent totally lacks jurisdiction to entertain the application sent by the third respondent for revising the order passed by his predecessor on approval by the second respondent. For the reasons to be mentioned below, as I am not agreeing with the contention of the learned senior Advocate appearing for the petitioner that first respondent has no jurisdiction to review or revise the order of respondents 2 and 3 this petition is liable to be dismissed.

13 Respondents are not disputing the fact that petitioner and her family members have some land near Government land. It is their case that taking advantage of the fact that there is Government land adjacent to her land petitioner encroached into the Government land and is claiming title thereto. From the counter affidavit filed on behalf of the respondents in the writ petition it is clear that respondents admit that petitioner and her family members have title to 2846 Sq. meters in T.S.No.37; 3144 Sq. meters in T.S.No.38 and 2532 Sq. meters in T.S.No.39. Whether those extents were purchased by the petitioner under the sale deed dated 3.5.1967 relied on by the petitioner or whether the said extents are apart from the land purchased by the petitioner under the sale deed dated 3.5.1967 can be decided only by

going through all the documents of title of the petitioner and her family members and the application for corrections made by them. So the actual extent of land purchased by the petitioner and the actual extent of land in her possession, and if she encroached in the Government land cannot be decided in a Writ Petition because they are all questions of fact relating to which evidence has to be taken. For that reason also this petition is liable to be dismissed.

14 For the purpose of this petition I assume that the survey was conducted without notice to the petitioner. Since petitioner admittedly came to know about the survey and made application for correction of the entries in the survey and other registers. I am unable to agree with the contention that the survey proceedings are a nullity because if the petitioner felt that the survey proceedings were null and void for want of notice to her, there was no need for her to make an application for review and could have ignored that survey on the ground that it is a nullity. The affidavit filed in support of the application is vague as to which of the respondents petitioner made an application for review, because in several paragraphs of the affidavit filed in support of the application it is vaguely stated that petitioner made application "to the respondents" without specifying to which respondent she made the application for review of the entries in the survey records. So I assume that as an after thought petitioner took a plea that the application for review filed by her has to be treated as an appeal under the provisions of the APSAB Act.

15 Be that as it may, it should be kept in view that first respondent issued the notice impugned in this petition to the petitioner only on the basis of the letter No.B3/265/94 dated 19.12.1996 addressed by the third respondent to the first respondent. The relevant portion thereof reads:

"3. The facts of the case are as follows:

i) Smt. Srilatha Bhupal claiming to be a G.P.A. holder has filed a

representation before the Chief Minister on 20-4-1993 wherein she has stated that her earlier representations given to the Collector, Hyderabad for rectifying the errors in respect of Sy.No.43/3 Block E Ward 87 and T.S.No.20/1 Block F Ward 87 have not been corrected by the Collector. Representations were communicated to the Collector from the C.M's office for rectifying the errors and to issue the orders. The Collector, Hyderabad after examining the representations vide his D.O.Rc.No.B2/385/83 dated 22-6-93 addressed to the Special Secretary to the Chief Minister has concluded that the legal, technical and administrative hurdles are coming in the way of entertaining the representation of Smt.Lata Bhupal. He has suggested that the applicant may be advised to approach the City Civil Court since T.S.No.43/3 block E Ward 87 has been correlated to Sy.No.227 of Khairatabad vg. Which is classified as Government land.

- ii) Again Smt. Sreelatha Bhupal filed two applications to the Collector, Hyderabad District on 19-2-1994 for correction of entries in Town Survey records pertaining to T.S.No.39 and 43/3 of Block E ward No.87 and T.S.No.20/1 Block F Ward No.87. She filed certain sale deed documents in support of her claim over the said lands.”

In Para 4 of the affidavit filed in support of the writ petition it is stated

4. It is respectfully submitted that I have clearly indicated the land in the declaration filed by me under Urban Land Ceiling Act in the year 1976. When the declaration filed was under consideration before the U.L.C. authorities, we were informed, in 1983, by the ULC authorities that the land admeasuring 8916 sq. yards purchased by me under a Regd. Sale Deed in sy. No.20/4, Somajiguda (v) has been recorded in the Town Survey Land Register as Government land. I immediately approached the respondent authorities that there was an error in the Town Survey Land Register, wherein the land purchased by me was recorded as Government Land. I have made detailed application to the respondent authorities for rectification of the error in the year 1983 itself. I was informed by the respondent authorities that Town Survey was concluded in the year 1978, wherein the land purchased by me was recorded as government land.

So it is clear that the petitioner, who came to know about the rectification of the entries in the survey records in pursuance of the survey even in 1983, failed to explain why she did not question the survey allegedly made without notice to her, immediately in 1983 or in 1984. Here I feel it relevant to state that in letter Lr.No.B3/265/94 dated 29.03.1994 addressed by the third respondent to the second respondent (filed as one of the material papers by the petitioner in support of her case) the subject and references mentioned are

Sub: LAND – Hyd. Dist. – Secunderabad Mandal Somajiguda

village Corporation of wrong entries in respect of T.S.No.37, 38, 39 & 43/3 in Block E and T.S.No.19/2 & 20/1 Block F of Ward 87 – Proposals submitted – Regarding.

Ref: 1. A/o Smt. Sreelatha Bhupal dt.24.5.93 addressed to government.

2. A/o. Smt. Sreelatha Bhupal dt.19-2-94 addressed to District Collector, Hyderabad.

3. Govt. Memo No.15765/Asn.11024/94-1 dt.4-3-94 from Secretary to Government, Revenue (Asn.III) Department, A.P. Secretariat Hyd.

In view thereof, it can be inferred that the petitioner, for the first time, made a representation to the Government in 1993, though she came to know about the correction of the entries in 1983. Why she waited for 10 long years, without questioning the survey, allegedly made without notice to her, is not explained by her in the affidavit filed in support of this petition.

16      Though there appears to be force in the contention of the learned Senior Advocate for the petitioner relating to the power of the appellate authority to entertain appeal that reached him from a different source, in view of the ratio in the decisions relied on by him, the fact remains that that representation, which can be treated as an appeal, should have to be made within the period prescribed for appeal after knowledge of the adverse order, though it might have reached the appropriate appellate authority long subsequent to the expiry of the period of limitation. Period of limitation for preferring an appeal, admittedly, commences from the date of knowledge of the adverse order appealed against. In this case petitioner did not produce any document to show that she in fact made an application or representation to any of the respondents seeking correction of the entries in the survey register, within the period of limitation from the date of her knowledge about

the survey in 1983. So even assuming that the representation made by the petitioner to the Government in 1993, which was referred to the third respondent and which ultimately reached the second respondent can be treated as an appeal by the petitioner to the second respondent against the correction of entries as per the survey, the same, prima facie, is an appeal filed beyond the period of limitation. So the power of the second respondent to pass orders, as an appellate authority, in the deemed appeal preferred by the petitioner long subsequent to the period of limitation, is doubtful.

17 In para 12 of Sanjeevi Naidu case (22 supra) the apex Court held

When a civil servant takes a decision he does not do it as delegate of his Minister. He does it on behalf of the Government. It is always open to a Minister to call for any file in his ministry and pass orders, he may also issue directions to the officers in his ministry regarding the disposal of Government business either general or as regards in any specific case and subject to over all power the officers designated by the rules or the standing orders can take decisions on behalf of the Government and thus the officers are the limbs of the Government and not its delegates.

In R.R. Verma case (23 supra) also the apex Court held

“Administrative decisions are always open to review and the decision taken after review is subject to judicial review of all grounds on which an administrative decision may be questioned in Court.

In view of the above observations of the apex Court it cannot be said that the first respondent has no jurisdiction to entertain an application for reviewing the decision taken by the second respondent on the basis of the recommendations made by the earlier incumbent to the post of third respondent, by his successor in office.

18 The order passed by the third respondent, on the basis of the permission given by the second respondent to correct the entries in the survey and other registers, prima facie is not in accordance with the

provisions of the APSAB Act. That action of respondents 2 and 3 in ordering correction of the entries in the survey register is only an administrative action, but not a judicial or quasi judicial action. So it is amenable for review by the Government i.e the first respondent. Therefore, as stated above it cannot be said that first respondent lacks jurisdiction to review the order of respondents 2 and 3 who are but its subordinates.

19 In view of the ratio in Hyderabad Potteries Limited case (5 supra), it cannot be said that the entries in TSLR are not conclusive, as TSLR is not a record of rights. In view thereof, if the petitioner feels that there is a cloud on her title in respect of the property purchased by her in 1967 in view of the entries made in the survey register, she can, if so advised, approach a civil court and seek appropriate relief, if the first respondent in the proceedings pending before it were to pass an order adverse to her interest or can even question the order of the first respondent itself, if it is adverse to her. What order the first respondent is going to pass on the report sent by the third respondent is not known. For that reason also it cannot but be said that this petition is premature. In view thereof I feel it is not necessary to express any opinion on the other contentions raised by the learned senior advocate and the learned Advocate General, because those contentions can be raised before the first respondent, who shall dispose of the case before him uninfluenced by the observations made in this order.

20 Before parting with the case I place on record my appreciation for the very able assistance rendered to this Court by Sri Challa Seetharamaiah and the learned Advocate General in disposal of this writ petition.

21 For the above reasons, I dismiss the petition with a direction to the first respondent to dispose of the case before him as expeditiously as possible, after giving an opportunity of hearing to both sides. Both parties are directed to maintain status-quo as on today in respect of the land in dispute till the disposal of the case by the first respondent. No order as to costs.

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-12-2007

***kvsn***

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- [1] AIR 1952 Madras 852  
[2] 1996 (6) Supreme 27  
[3] 1988 (4) SCC 31  
[4] (1999) 6 SCC 764  
[5] 2001 (3) ALT 200  
[6] 1979 (3) All. E R 876  
[7] (2003) 8 SCC 50  
[8] AIR 1932 PC 165 at p. 167  
[9] AIR 1970 SC 1  
[10] 2005 AIR SCW 5851 at page 5857  
[11] (1988) 1 SCC 40  
[12] (1999) 8 SCC 16  
[13] 2000 (3) ALD 520  
[14] 2000 (3) ALD 520  
[15] AIR 1962 SC 1893  
[16] AIR 1961 SC 372  
[17] (1979) 2 ALL ER 440  
[18] AIR 1967 SC 1274  
[19] AIR 1975 SC 2135  
[20] AIR 2003 SC 3290  
[21] AIR 1997 AP 121  
[22] AIR 1970 SC 1102  
[23] 1980 (3) SCC 402  
[24] AIR 1955 SC 549  
[25] 1998 (5) ALD 565

